

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Evaluate Existing  
Practices and Policies for Processing Offset Rate  
Increases and Balancing Accounts in the Water  
Industry to Decide Whether New Processes are  
Needed

Rulemaking 01-12-009  
(December 11, 2001)

**SCOPING MEMO AND RULING  
OF ASSIGNED COMMISSIONER AND ADMINISTRATIVE LAW JUDGE**

**1. Summary**

This ruling and scoping memo confirms the categorization and scope set forth in the Order Instituting Rulemaking (OIR). Also, per the OIR, hearings are not necessary. However, we schedule a workshop and otherwise modify the schedule from that set forth in the OIR.

**2. Category of Proceeding**

The OIR preliminarily categorized this proceeding as quasi-legislative; no party has objected to this categorization; and we confirm it. This categorization ruling may be appealed under the provisions of Rule 6.4(a) of the Commission's Rules of Practice and Procedure (Rules).

**3. Presiding Officer**

As stated in the OIR, Commissioner Geoffrey F. Brown and Administrative Law Judge (ALJ) Janet A. Econome are assigned to this proceeding. Pursuant to Rule 5(k)(3), the assigned Commissioner is the presiding officer in a quasi-legislative proceeding, except that the assigned ALJ shall act as the presiding

officer in the Commissioner's absence at any hearing other than a formal hearing as defined in Rule 8(f)(2).

#### **4. Scope and Schedule**

The OIR set forth the proceeding's scope and determined that the Commission would address the following issue in an interim decision.

"The existing procedure for recovery from balancing accounts is as follows: (1) Utilities, at their option, may request a surcharge once under collections reach 2%; (2) Otherwise, balancing account review and recovery of remaining balances are processed at the time of the district's next GRC. Should the Commission revise its existing procedures for recovery of under collections or over collections in balancing accounts that existed prior to, and were suspended on November 29, 2001? If so, what specific procedures should be implemented (A) for districts that are within their rate case cycle and are not over earning either on any basis; (B) for districts that are within their rate case cycle and are over earning on an actual or on a pro-forma basis; (C) for districts that have stale adopted quantities because they are outside their rate case cycle.?" (OIR at p. 5.)

The OIR also set forth other issues to be considered in this proceeding in a final decision.

"Should the Commission revise its existing rules for obtaining offset rate increases to include consideration of (A) whether the district/utility is outside its rate case cycle? (B) whether the district/utility is over earning on an actual basis? (C) whether district/utility is over earning on a weather adjusted pro-forma basis?

"Should an earnings test be employed to determine whether a district/utility should be allowed to recover all, none, or some portion of under collections in a balancing account? If so, should the test be weather adjusted or actual recorded earnings?

“Should offset rate increases and attendant balancing account treatment be available only to the district/utility that has subjected itself to the scrutiny of a GRC and is currently in that rate case cycle?

“If a district/utility outside its last rate case cycle is eligible for offset rate increases and attendant balancing account treatment, what calculation should be used to replace the stale adopted quantities from the last GRC?” (*Id.*)

This ruling confirms that the above issues comprise the scope of this proceeding. In order for the Commission to address these issues, the OIR required that respondents (Class A and B water and sewer utilities)<sup>1</sup> and the Office of Ratepayer Advocates (ORA) answer the questions set forth in the attachments and that the utilities provide balancing account and earnings information. After reviewing the initial responses, it may be more efficient to address the interim issue and remaining issues in one decision (rather than two) because similar policies and data are relevant to both inquiries. For example, based on the comments received to date, all parties except ORA believe that the existing practices and policies for processing offset rate increases and balancing accounts should remain in place, and ORA recommends that the Commission apply its recommended procedures to both the balancing accounts in existence prior to and after November 29, 2001. However, until we receive the parties’ March 22 comments, we cannot make a final determination as to whether both an interim and a final decision are necessary.

Therefore, we modify the schedule in the OIR as set forth below. If the draft decision scheduled to mail no later than May 31 does not address all OIR

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<sup>1</sup> Class C and D water and sewer utilities may, but need not, respond to the OIR.

issues, we will issue a revised scoping memo setting forth the remaining schedule.

This modified schedule supercedes that in the OIR.

<b>Event</b>	<b>Date</b>
Respondents and ORA file Opening Comments on Remaining Issues (Appendix B, Part III)	March 22, 2002
Workshop on expense component of means test (see Section 5)	March 27, 2002, from 11:00 a.m. through 1:00 p.m., in Room 3105 California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, San Francisco
Respondents and ORA file reply comments on Remaining Issues (Appendix B, Part III)	April 2, 2002
Workshop Report Issues	April 5, 2002
Proposed decision issues	No later than May 31, 2002

## **5. Expanding the OIR's Scope and the Need for Hearings**

Parties have made four recommendations for either expanding the proceeding's scope or holding hearings. First, several parties recommend including the issue of whether any of the proposed revisions would affect the utilities' risk and rate of return, and some parties believe hearings are necessary on this issue. For example, the California Water Association set forth specific issues it believes should be included within the OIR's scope.

“What effects will adoption of any of the changes in the ratesetting system proposed in the OIR or in the course of this proceeding have on the business risks experienced by the several classes of Commission-regulated water utilities?

“If it is determined that business risks are increased as a result of these changes, is the level of increased business risk consistent in all situations or may the level of business risk vary significantly depending on company-specific situations?”

“By what amount should authorized rates of return on equity for the several classes of water utilities be adjusted in response to such changes in business risks?”

“Should appropriate benchmark adjustments in authorized rates of return be determined in this proceeding, subject to implementation by advice letter?”

“If not, what procedures should be followed to make appropriate adjustments in authorized rates of return and to effect rate changes reflecting such adjustments?”

“Will the increase in business risk brought about by the proposed changes in the ratesetting system cause increases in costs of service and higher rates for utilities that outweigh any benefits of limiting the use of offset procedures?”

“Is the denial of offset cost recovery an appropriate ratemaking method for dealing with alleged over earning? Put another way, is there a reasonable nexus between the use of offset procedures and over earning?” (January 18, 2002 Comments of the California Water Association, pp. 9-10.)

Re-adjusting a utility’s specific rate of return is not within the scope of this industry-wide proceeding. The appropriate rate of return is an issue for the utilities’ general rate cases. Furthermore, the question of how various risks affect a utility’s rate of return involves an inquiry into all relevant circumstances, not

just one specific factor.<sup>2</sup> Again, the appropriate forum for such inquiry is a utility's general rate case, or other appropriate proceeding the Commission may designate in the future. We therefore do not modify the preliminary scoping memo set forth in the OIR.

Second, San Gabriel Water Company states that the scoping memo should include the calculation of expenses in the weather adjusted pro forma return or other earnings test. San Gabriel explains that there is a "pending controversy regarding the adjustment of expenses in calculating the weather-normalized pro forma rate of return following implementation of attrition rate increases. Under the Commission's Rate Case Plan, San Gabriel files its general rate cases in July with two attrition year step increases." San Gabriel explains that it would be adversely affected if the pro forma earnings test does not match revenues and expenses related to attrition increases. (1/4/02 Comments at p. 3.)

With respect to the pro forma test, the proper calculation of the expense component of the means test is a narrow issue which may be applicable not only to San Gabriel but also to other utilities. This narrow issue is within the existing scope of this proceeding. Because addressing this narrow element of the calculation is quite technical in nature, it is best accomplished in a workshop setting. We therefore schedule a workshop on this narrow issue to be conducted by the Commission's Water Division on Wednesday, March 27, 2002, from

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<sup>2</sup> In fact, the filings in this case demonstrate that companies are not consistent on how they maintain their balancing accounts. For example, some utilities book their balancing accounts as deferred debits or credits, such that they record undercollections or overcollections on the company's balance sheet. Some utilities do not book their balancing accounts at all, but simply track the bills and offset rate collections, thereby maintaining them in the same way they would maintain a memorandum account.

11:00 a.m. to 1:00 p.m. The workshop will be held at the California Public Utilities Commission, State Office Building, 505 Van Ness Avenue, Room 3105, San Francisco, CA. We direct the Water Division to file a workshop report summarizing the workshop and making recommendations on the issue addressed no later than April 5, 2002.

Third, San Jose Water Company believes hearings are necessary because consideration of water company earnings data during a selected five-year period is contrary to the Commission's ratemaking methodologies employed to set water rates in the first place. However, the fact that the OIR sought information on earnings over a five-year period does not mean the Commission will employ any particular methodology or time period to establish eligibility for recovery of balancing accounts. Moreover, San Jose has not stated specific disputed issues of material fact for which hearings would be necessary. Therefore, hearings are not necessary on this issue.

Finally, California Water Service states that hearings and workshops are necessary to explore the causes of over-earnings, and that the over-earning is not caused by the balancing accounts. The cause of over-earnings is not relevant to the OIR because the OIR does not maintain balancing accounts cause over earning. Rather, the OIR asks whether recovery of the balancing accounts should be eliminated or reduced in certain circumstances when the utility is over-earning. Furthermore, under the proposals, earnings above the authorized rate of return that are not attributable to balancing account recovery would be kept by the utility.

Parties recommending hearings believe they are necessary to address some aspect of the issues set forth above. Because of our conclusions set forth above,

we confirm the preliminary determination made in the OIR that hearings are not necessary.

## **6. Service List**

According to the OIR, the Commission's Process Office was to compile a new service list for the proceeding. Class A and B water and sewer utilities and ORA were automatically included on the list, as well as any other interested parties who timely notified the Process Office. A copy of the service list is set forth in Appendix A. If other persons wish to be added to the appearance portion of the service list, they should seek permission from the assigned ALJ.<sup>3</sup>

### **IT IS RULED** that:

1. This rulemaking is categorized as quasi-legislative.
2. The scope and schedule for this rulemaking are set forth in Section 4.

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<sup>3</sup> Those persons who actively participate by filing comments should be granted party status as an appearance. (The OIR requires all Class A and B water and sewer utilities and ORA to respond to the assigned questions, and therefore these parties are granted appearance status.) People not actively participating in the rulemaking will be placed on the information only list, and will receive all Commission rulings and decisions. Also, persons designated as information only do not have the status to appeal a Commission decision.



3. Hearings are not necessary in this rulemaking.
4. The service list for this rulemaking is attached hereto as Appendix A.

Dated March 11, 2002, at San Francisco, California.

/s/ GEOFFREY F. BROWN  
Geoffrey F. Brown  
Assigned Commissioner

/s/ JANET A. ECONOME  
Janet A. Econome  
Administrative Law Judge

**APPENDIX A**

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**Last Update on 08-MAR-2002 by: SMJ**  
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**APPENDIX A**

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**APPENDIX A**

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**(END OF APPENDIX A)**

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on all parties of record in this proceeding or their attorneys of record.

Dated March 11, 2002, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.